

EXHIBIT G

EXHIBIT 13

From: [Joseph Zito](#)
To: [James, Jhaniel N. \(CIV\)](#)
Cc: [Johnson, Grant D. \(CIV\)](#); [Ben Deming](#)
Subject: [EXTERNAL] Re: FW: Factor2 Multimedia Systems, LLC v. United States, Nos. 24-475, 24-477
Date: Friday, July 26, 2024 6:18:04 PM

Thank you for your letter. We are filing the Amended Complainant and of course you will have the additional time to respond.

1. We have fixed this typo in the Amended Complaint.
2. We have addressed this issue in the Amended Complaint to the extent that it required amending.

With respect to Sec 285, we note that Giesecke+Devrient GmbH v. United States, 150 Fed. Cl. 345, 347 (2020) was recently decided at the CAFC. The CAFC in Giesecke v US June 26, 2024 did not affirm that sec 285 does not apply in the CoFC:

"We affirm the decision of the Court of Federal Claims, but on a different ground. HID is not a prevailing party, and thus attorney fees are not appropriate under § 285. We do not separately address the Court of Federal Claims' determination that this case is exceptional or whether the Court of Federal Claims has jurisdiction to grant attorney fees under § 285."

In fact, the CAFC made a thorough analysis of sec 285, applying it to the activities in the CoFC. Thus in our opinion, it still applies. However, I am quite confident that neither you nor I will undertake any action that may give rise to any sec 285 Motion.

3. We agree that the The Rules of the Court of Federal Claims govern, however, do not agree that the FCRP do not apply at all, as reflected in a number of decisions, where aspects of the CoFC Rules have been applied in light of FRCP decisions.
4. This has been amended.
5. This citation has also been amended, although indirect infringement is not excluded under 28 USC 1498.
6. We do not agree with your assertion that the ACA bars recovery nor do we agree that the ACA applies to patent infringement. It is clear that the ACA covers government contracting and was never intended to cover patent infringement. A plain reading of the statute demonstrates non-coverage. Plaintiff has the right to sue for past damages.

There is no controlling case law on this issue from the CAFC or the USSC and thus we intend to proceed. Any ruling that you assert would bar recovery in this matter, if found to bar recovery, will be appealed and overturned. We have a good faith basis for our position.

In addition, the original inventors / owners of the patent are the sole owners of interest in the plaintiff and in the intermediary LLC, Ameritech. Thus, although technically assigned, the true party in interest remains the same as the original owner of record.

7. We are filing our Corporate statement with the Amended Complaint.

Joseph J. Zito
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On 5/6/2024 11:56 AM, James, Jhaniel N. (CIV) wrote:

Joseph,

We have not received any response to our April 22, 2024 correspondence (attached again for your convenience). Similarly, you have not corrected any of the noted defects in Plaintiff's Complaint in Case No. 24-475 or dismissed the duplicative Case No. 24-477, each of which we requested that you address by no later than this past Friday, May 3.

As noted in our correspondence, the Government had hoped to avoid unnecessary motion practice to address the aforementioned issues. However, as Plaintiff has not responded to our April 22 letter, the Government now plans to request a sixty-day extension of time to its May 27 deadlines to respond to Plaintiff's Complaints in each of Case No. 24-475 and Case No. 24-477. Can you please let us know at your earliest convenience whether Plaintiff opposes the Government's requested extensions?

Best,

Jhaniel N. James

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From: James, Jhaniel N. (CIV)
Sent: Monday, April 22, 2024 10:18 AM
To: JZITO@DNLZITO.COM
Cc: Johnson, Grant D. (CIV) [<Grant.D.Johnson@usdoj.gov>](mailto:Grant.D.Johnson@usdoj.gov)
Subject: Factor2 Multimedia Systems, LLC v. United States, Nos. 24-475, 24-477

Dear Mr. Zito:

Please find attached a correspondence concerning the above-referenced matters. Thank you.

Best,

Jhaniel N. James

Intellectual Property Attorney

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